

STATE OF MICHIGAN

MICHIGAN SUPREME COURT

(On Appeal from the Michigan Court of Appeals and
the Circuit Court for the County of Oakland)

BRIAN J. PERRY,

Plaintiff-Appellee,

vs.

Supreme Court No. 129943

COA No.: 254121

L.C. No.: 03-053489-NI

GOLLING CHRYSLER PLYMOUTH
JEEP, INC.,

Defendant-Appellant.

BRIEF AMICUS CURIAE
OF THE MICHIGAN AUTOMOBILE DEALERS ASSOCIATION

Respectfully submitted,

WILLINGHAM & COTÉ, P.C.

By: Ray Foresman (P13574)
Jason W. Johnson (P49033)
Attorneys for Michigan Automobile
Dealers Association
333 Albert Ave., Ste 500
East Lansing, MI 48826
Phone: (517) 351-6200
Fax: (517) 351-1195

TABLE OF CONTENTS

INDEX OF AUTHORITIES	iii
STATEMENT OF ORDER APPEALED FROM	iv
STATEMENT OF ISSUE PRESENTED	vi
I. STATEMENT OF FACTS AND INTEREST	1
II. ARGUMENT	3
A. Title to the Vehicle in the Underlying Litigation Validly Transferred to Ksenia Nichols Upon the Parties' Execution of the Application for Michigan Vehicle Title and Golling's Delivery of the Vehicle to Ms. Nichols	3
B. Important Public Policy Considerations Support Reversal of the Court of Appeals' Reliance on the <i>Goins v Greenfield Jeep</i> <i>Eagle</i> dicta, Suggesting that Dealers Must Send or Deliver the Application for Michigan Vehicle Title to the Secretary of State in order to Transfer Title to the Customer	5
III. CONCLUSION	10

INDEX OF AUTHORITIES

Cases

<i>Goins v Greenfield Jeep Eagle, Inc.</i> , 447 Mich 1; 534 NW2d 467 (1995)	iv, 4-7, 9, 10
<i>Griffith v State Farm Mut Auto Ins Co</i> , 472 Mich 521; 697 NW2d 895 (2005)	4
<i>Halloran v Bhan</i> , 470 Mich 572, 578; 683 NW2d 129 (2004)	4
<i>Huggett v Department of Natural Resources</i> , 464 Mich 711, 717; 629 NW2d 915 (2001)	3
<i>Koontz v Ameritech Services, Inc.</i> , 466 Mich 304, 312; 645 NW2d 34 (2002)	3
<i>State Farm Fire & Cas Co v Old Republic Ins Co</i> , 466 Mich 142, 146; 644 NW2d 715 (2002)	4

Statutes

MCL 257.233	3
MCL 257.233(9)	4
MCL 257.240	3
MCL 257.401	iv, v, 3, 5, 9, 10

STATEMENT OF ORDER APPEALED FROM

The Michigan Automobile Dealers Association ("MADA"), movants for *amicus curiae* status along with the Detroit Automobile Dealers Association ("DADA"), supports a grant of the Application for Leave to Appeal filed by Defendant, Golling Chrysler Plymouth Jeep, Inc. ("Golling"), from the Court of Appeals' Opinion dated October 11, 2005, as to the issue of Golling's liability under Michigan's Owners' Liability Statute, MCL 257.401.

As co-movant, DADA has ably pointed out, a reversal of the Court of Appeals' ruling in this matter is supported by clear and unambiguous statutory language governing the manner in which Michigan motor vehicle dealers have transferred title to vehicle purchasers for many years and at present. To the extent that Michigan courts, including the Court of Appeals in this case, are upsetting these statutory rules based on dicta in *Goins v Greenfield Jeep Eagle, Inc.*, 447 Mich 1; 534 NW2d 467 (1995), the intervention of this Court and subsequent reversal is required to prevent industry-wide upheaval and disruption to Michigan motor vehicle dealers and their customers.

In this case, the Court of Appeals recognized that both parties to the underlying litigation, Golling and former co-Defendant Ksenia Nichols, executed the Application for Michigan Vehicle Title one day prior to the subject accident. Under current law, title validly transferred from Golling to Ms. Nichols upon their execution of the Application for Michigan Vehicle Title, making her the sole statutory owner under MCL 257.401. The Court of Appeals' unfortunate reliance on *Goins* caused that Court to go beyond the clear and concise language of the applicable statutes, gratuitously adding in dicta that the Application for Michigan Vehicle Title be sent to the Secretary of State before title can validly transfer

to the customer and the dealer can be relieved of liability under MCL 257.401. MADA, as *amicus curiae*, respectfully requests that this Court consider this matter and reverse the Court of Appeals' opinion on this point. If the Court of Appeals' decision is not reversed, the economic hardship and inconvenience to Michigan motor vehicle dealers and their customers will be incalculable. The Legislature did not envision such a result in drafting the relevant provisions of the Motor Vehicle Code and this Court is urged to return to a proper and reasonable statutory construction.

STATEMENT OF ISSUE PRESENTED

1. Did Defendant Golling Chrysler Plymouth Jeep, Inc., validly transfer title and cut off statutory owners' liability when Ksenia Nichols, the purchaser of the vehicle sold by Golling, signed the Michigan Application for Motor Vehicle Title?

Amicus curiae, MADA, answers "yes."

The Michigan Court of Appeals answered "no."

The trial court answered "yes."

2. Does the decision of the Court of Appeals below constitute sound public policy for both Michigan motor vehicle dealers and their customers purchasing motor vehicles?

Amicus curiae, MADA, answers "no."

The Court of Appeals did not address this issue.

The trial court did not address this issue.

I. STATEMENT OF FACTS AND INTEREST

Amicus curiae, the Michigan Automobile Dealers Association ("MADA"), shares the interests in this case of both Defendant, Golling Chrysler Plymouth Jeep, Inc. ("Golling"), and the Detroit Auto Dealers Association ("DADA"), MADA's co-movant for *amicus curiae* status.

MADA is a statewide trade association headquartered in East Lansing, Michigan. MADA represents the interests of its 743 members, which are franchised new motor vehicle dealers located throughout Michigan's Lower and Upper Peninsulas. Together, MADA's member dealers constitute more than 90% of the approximately 800 new motor vehicle dealers located in the State of Michigan.

The instant case involves issues of great significance to all new motor vehicle dealers in Michigan. All dealers in Michigan operate under current law, which provides that the title to a motor vehicle purchased by a customer passes from the dealer to the customer when the customer executes the Application for Michigan Vehicle Title (Michigan Secretary of State form RD-108). If the erroneous interpretation in the Court of Appeals' October 11, 2005 Opinion is not reversed, which found that a vehicle purchaser does not take title to the vehicle until such time as the RD-108 is sent or delivered to the Secretary of State, the liability implications will seriously harm Michigan motor vehicle dealers.

More importantly, Michigan consumers will also be harmed and substantially inconvenienced by the effects the Court of Appeals' decision will have on the current operations and methods of doing business and delivering vehicles to purchasers at Michigan motor vehicle dealerships. A failure to reverse this decision will have a "ripple

effect" throughout Michigan's economy, the impact of which should not be misunderstood or overlooked as dealers will need to substantially overhaul and revamp their sales and delivery practices to insulate themselves from liability during the period after the customer's signing of the Application for Michigan Vehicle Title, until the Application can be sent to the Secretary of State. For several reasons, MADA's participation will assist this Court in understanding the impact a denial of Golling's Application for Leave will have on the public at large.

However, MADA is not appearing as *amicus curiae* to either challenge or endorse the material facts as established by the parties to this litigation to date. For purposes of this Brief, MADA accepts the statements of facts and proceedings submitted by Golling. Rather, MADA, as a statewide trade association, has chosen to file this Brief as the collective voice of its membership, who uniformly agree that the issues presented in the instant case are of great and continuing concern and significance to new motor vehicle dealers, their customers, and to the State of Michigan.

II. ARGUMENT

A. **Title to the Vehicle in the Underlying Litigation Validly Transferred to Ksenia Nichols Upon the Parties' Execution of the Application for Michigan Vehicle Title and Golling's Delivery of the Vehicle to Ms. Nichols**

Co-movant, DADA, has pointed out in detail in its Brief *amicus curiae* the relevant statutory provisions governing the transfer of vehicle title to a purchaser under the Michigan Motor Vehicle Code, including MCL 257.240 and MCL 257.233. See DADA's Brief, at 2-3, and statutes cited therein. Under these clear and unambiguous statutes, title to the vehicle transfers to its purchaser, and the seller can no longer be deemed a statutory owner for liability purposes under MCL 257.401, once the Certificate of Title or the Application for Vehicle Title has been executed by the purchaser and the vehicle delivered to the purchaser.

These statutory rules need no judicial construction. For decades, Michigan motor vehicle dealers have sold vehicles and transferred title by the customer's signing of the Certificate of Title or the Application for Vehicle Title, followed by the customer taking delivery of the vehicle. When the Legislature has unambiguously conveyed its intent in a statute, the statute speaks of itself, and judicial construction is not permitted. *Huggett v Department of Natural Resources*, 464 Mich 711, 717; 629 NW2d 915 (2001). Because the proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute. *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 312; 645 NW2d 34 (2002). Unfortunately, this is precisely the error committed by the Court of Appeals in this case, and this Court should reverse as a result.

If dicta announced by this Court in *Goins v Greenfield Jeep Eagle, supra*, were followed by Michigan courts as actual practice, the motor vehicle dealer would be deemed the statutory owner of the vehicle until such time as the Application for Vehicle Title or the Certificate of Title could be delivered by the dealer to the nearest Secretary of State's office. Such an interpretation ignores the statutory language referenced above, clearly providing that title transfers upon the execution of either of the two documents named in the statute:

"Upon the delivery of a motor vehicle and the transfer of sale or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the Application for Title or the Certificate of Title."

MCL 257.233(9) (emphasis added).

The Court of Appeals' decision in this case, following *Goins'* dicta, renders the word "execution" in the above statute mere surplusage. Such a construction was not intended by the Legislature. Moreover, this Court has held on numerous occasions that Courts must give effect to every word, phrase and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521; 697 NW2d 895 (2005); *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). In addition, this Court accords undefined statutory terms their plain and ordinary meanings and may consult dictionary definitions in such situations. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004). As referenced in the American Heritage Dictionary of the English Language (Fourth Edition, 2000), the noun "execution" is defined, in part, as "the act of executing something"

(Definition 1.a.) and as the "validation of a legal document by the performance of all necessary formalities" (Definition 4.c.). Used as a verb, the word "execute" is defined in part, as "to make valid, as by signing." *Id.* Under any generally accepted definition, dictionary or otherwise, it cannot reasonably be disputed that the Application for Motor Vehicle Title and/or the Certificate of Title documents are "executed" when they are signed by the vehicle purchaser and the title then transfers, relieving the motor vehicle dealer of statutory liability imposed by MCL 257.401. The Court of Appeals' holding to the contrary, based on nonbinding dicta, contravenes the clear language of the statute and the Legislature's intent. Accordingly, reversal under these circumstances is manifestly appropriate.

B. Important Public Policy Considerations Support Reversal of the Court of Appeals' Reliance on the *Goins v Greenfield Jeep Eagle* dicta, Suggesting that Dealers Must Send or Deliver the Application for Michigan Vehicle Title to the Secretary of State in order to Transfer Title to the Customer

If the Court of Appeals' decision in this case is allowed to stand, as to its endorsement of *Goins'* dicta requiring that motor vehicle dealers send or deliver the Application for Michigan Vehicle Title to the Secretary of State ("SOS") in order to validly transfer title to the purchaser, the effects on Michigan's motor vehicle sales industry would be staggering, harming dealers and consumers alike.

First and foremost, no Michigan dealer would be willing to allow a vehicle purchaser to take delivery of a vehicle unless and until positive confirmation of actual delivery of the paperwork to the SOS is received and obtained, which as will be seen may not even be possible in certain circumstances. As the DADA notes, the Court of Appeals' statements

contradict the legal requirements placed upon a dealer with respect to processing an Application for Title. DADA's Brief, at 8. The Affidavits of MADA dealer members, attached to this Brief, bear out how unworkable and flawed the system of delivering motor vehicles to purchasers would become, a result which is clearly not intended or prescribed by current law.

MADA dealer member Michael Savoie, President of Mike Savoie Chevrolet in Troy, Michigan, and a past President of both the MADA and DADA, is representative of the experience of urban dealers in major metropolitan areas in dealing with the SOS office. As Mr. Savoie notes in the Affidavit attached as Exhibit A, SOS personnel, due to the busy urban environment, have instructed his porters not to transact in-person business at the SOS branch nearest Mr. Savoie's dealership. Instead, the SOS has established mailboxes in the office foyer for local automobile dealers, into which Mr. Savoie's porters drop off executed Applications for Michigan Vehicle Title and customer paperwork. At the same time, the porters pick up from the mailbox any executed paperwork which has been processed by the SOS employees.

As further evidence that the *Goins* dicta is unworkable from a practical standpoint, neither *Goins* nor the Court of Appeals in this case defined what constitutes "sending" the paperwork to the SOS. For example, unless the local SOS office's procedures were revised, Mr. Savoie's porters could not secure any written proof or confirmation (such as a receipt) that the paperwork they drop off to the SOS was actually received by an SOS employee that day. Since there can be as much as a ten-day delay between the time that a customer's paperwork may be dropped off to the SOS and then returned as processed

in the mailbox, there is no way of knowing when the mailbox is opened and the documents are accepted by SOS personnel.

Likewise, Mr. Savoie's dealership maintains late-night hours on two weekdays, during which the SOS mailbox is inaccessible after the branch closes at the end of the business day (5:00 p.m.).¹ Vehicles sold after the SOS office closes for the day (5:00 p.m.) could not be delivered the same day, as there would be no way to deliver or send the papers to the SOS. Even if sending were construed simply as mailing, there would also be no way to prepare and mail completed paperwork at the same time the customer takes delivery of the vehicle. Mail service is not available in many areas on Saturday afternoons, and Michigan law also provides for dealers in certain counties, based on population, to open for sales on Sundays when no mail service is available at all. Dealers simply would not be able to allow customers to take delivery of the vehicles until acceptance of the paperwork by the SOS could be confirmed, which would frustrate customer expectations in receiving prompt delivery of the vehicles they have purchased and paid for.

MADA's immediate past President for 2005, Dave Kring of Dave Kring Chevrolet Cadillac in Petoskey, Michigan, is aware of many of the same logistical problems that would confront rural and outstate dealers if the *Goins* dicta, and the Court of Appeals decision in this case, were to become law. Mr. Kring's Affidavit, attached as Exhibit C, explains his procedures. His dealership sends porters to the local SOS office once daily,

¹The sole exception is Wednesday, when the SOS remains open from 11 a.m. until 7 p.m., except for certain specialty offices which maintain extended and Saturday hours. Exhibit B, SOS office hours. As Mr. Savoie notes, however, his dealership is closed for sales on Saturdays and his late night hours do not include Wednesdays.

to drop off completed customer paperwork. If more than one customer's paperwork is sent over, the porter simply leaves all of the transactions and then returns to pick them up the following day, or perhaps the third day if the SOS office is backlogged.

Also, unlike Mr. Savoie's dealership, Mr. Kring's dealership maintains sales hours on Saturdays. With regard to any purchase by a customer on Saturday, Mr. Kring would not be able to allow the customer to take delivery on Saturday as his local SOS office in Petoskey is not open on Saturdays to accept delivery of the customer's paperwork.² This would also be the case with respect to deliveries occurring after 5:00 p.m. when the SOS office in Petoskey closes for the day (other than Wednesdays), as a porter could not deliver the paperwork to the SOS the same day.

The ultimate damage, of course, results to Michigan consumers, not just to Michigan motor vehicle dealers. Both Mr. Savoie and Mr. Kring noted that the majority of their vehicle deliveries to customers occur late in the day, generally after 4:00 p.m. These office hours are maintained due to customer demand, as customers do not want to take off work for the purpose of test driving, purchasing and taking delivery of motor vehicles. Were customers told that they would need to wait, for example, until the following Monday to take delivery of a vehicle purchased late on Friday afternoon, the customers would be frustrated and inconvenienced.

Likewise, many customers often need immediate delivery of vehicles, to replace nonfunctioning vehicles or simply because they want to take possession on the spot after

²In fact, the only Saturday services currently offered by the SOS in the entire State of Michigan are provided from 9:00 a.m. until noon at four SOS "SUPER!Centers," located in Clinton Township, Detroit, Flint, and Grand Rapids. Exhibit D.

completing the sales transactions. Again, under the Court of Appeals' misinterpretation of the law, dealers could not allow customers to take possession of the vehicles where physical access to an open SOS office, along with the means for the SOS personnel to provide written confirmation of delivery or receipt of the Application for Title, are not available.

In these and similar scenarios, customers may choose not to purchase a vehicle at all, as the legal obstacles to sales and prompt delivery may become too onerous for some consumers. In addition, the extra costs of compliance, such as having Mr. Kring's porters stand in SOS service lines repeatedly to complete each transaction, must be passed on at some point and will make what is already an expensive purchase for consumers even more costly. In a time when Michigan, and its automobile industry, lag the nation in recovering from the recent economic recession, it makes little sense to further burden motor vehicle dealers and purchasers with an additional layer of judicially-imposed regulation. The current statutory scheme for transferring title to motor vehicles is clear, fair and understandable, having been followed by Michigan dealers for many years. A failure to reverse the Court of Appeals in this case, as to its reliance on the dicta of the *Goins* decision to impose liability on Golling pursuant to MCL 257.401, will serve only to perpetuate unsound public policy.

III. CONCLUSION

As noted by Golling and fellow *amicus curiae* DADA, no statutory basis exists to support the erroneous holding of the Court of Appeals, based on nonbinding dicta and on an ignorance of otherwise clear and unambiguous statutes prescribing the manner in which title to motor vehicles is transferred to Michigan vehicle purchasers. These statutes need no construction or interpretation, and the Court of Appeals erred in doing so.

In addition, the outcome resulting to Michigan motor vehicle dealers and to Michigan consumers if the Court of Appeals' decision is allowed to stand results in negative public policy consequences. A precise statutory mechanism for the transfer of vehicle title will be replaced with a common-law construction which is difficult to interpret, and even more difficult and costly to implement as a practical matter. The Legislature certainly did not envision such a result when drafting the Motor Vehicle Code, and MADA respectfully urges this Court to reverse the Court of Appeals as to its holding imposing liability on Golling under MCL 257.401 and to repudiate the Court's reliance on the nonbinding dicta in *Goins* requiring sending or delivery of the Application for Michigan Vehicle Title to the Secretary of State.

Respectfully submitted,
WILLINGHAM & COTÉ, P.C.

By:

Ray Foresman (P13574)

and

Jason W. Johnson (P49033)
Attorneys for Michigan Automobile
Dealers Association
333 Albert Ave., Ste 500
East Lansing, MI 48826
Phone: (517) 351-6200